FILED OCTOBER 22, 2009

STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **LAWRENCE REX YOUNG,** **Member No. 38323,** A Member of the State Bar.	)	Case No.: **08-C-13176-DFM** **DECISION**

INTRODUCTION

This contested conviction referral proceeding involves respondent **LAWRENCE REX YOUNG'S**[1] August 5, 2008, misdemeanor conviction for driving under the influence of alcohol (Veh. Code, § 23152, subd. (a)). (Cal. Rules of Court, rule 9.10(a); Bus. & Prof. Code, §§ 6101, 6102;[2] Rules Proc. of State Bar, rule 320(a).) The issues in this proceeding are whether the facts and circumstances surrounding respondent's commission of the crime of driving under the influence of alcohol involved moral turpitude (§§ 6101, 6102) or other misconduct warranting discipline (see, e.g., *In re Kelley* (1990) 52 Cal.3d 487, 494); and, if so, what is the appropriate level of discipline to be imposed.

[1] Respondent was admitted to the practice of law in the State of California on January 5, 1966, and has been a member of the State Bar since that time.

[2] Except where otherwise indicated, all further statutory references are to the Business and Professions Code.

The Office of the Chief Trial Counsel of the State Bar of California (State Bar) was represented by Deputy Trial Counsel Michael J. Glass. Respondent acted as counsel for himself.

For the reasons stated *post*, the court finds that the facts and circumstances surrounding respondent's commission of the crime of driving under the influence of alcohol involved misconduct warranting discipline, but not moral turpitude. After evaluating the gravity of the crime, the circumstances of the case, the aggravating circumstance, and the compelling mitigation, the court concludes that the appropriate level of discipline in this proceeding is one year's stayed suspension and three years' probation with conditions, including 30 days' actual suspension. Any greater level of discipline would be unnecessary to protect the public, the profession or the courts, but instead would be only punitive.

PERTINENT PROCEDURAL HISTORY

Respondent's Criminal Conviction and Probation

In May 2008, a two-count misdemeanor complaint was filed against respondent in the Los Angeles Superior Court. In count 1 of the complaint, respondent was charged with driving under the influence of alcohol (Veh. Code, § 23152, subd. (a)). In count 2, respondent was charged with driving with a blood alcohol level of 0.08 percent or more (Veh. Code, § 23152, subd. (b)). Both of these charges arose out of respondent's arrest in Long Beach, California on April 16, 2008, when he was driving himself home after having a "reunion" dinner at a restaurant with a longtime friend. According to a blood alcohol test administered shortly after respondent's arrest, respondent's blood alcohol content was 0.14 percent.

On August 5, 2008, on a plea of nolo contendere, the superior court convicted respondent on count 1 for driving under the influence of alcohol (DUI) (Veh. Code, § 23152, subd. (a)).

On October 16, 2008, the superior court dismissed count 2 in the furtherance of justice (Pen. Code, § 1385); suspended the imposition of sentence; and placed respondent on 48 months'

summary probation with conditions, including: 96 hours in the Los Angeles County Jail (with credit for the 96 hours he had already served); a $570 fine (together with penalty assessments thereon); and completion of (1) an 18-month Second Offender Alcohol and Other Drug Education and Counseling Program, (2) the Victim Impact Program of Mothers Against Drunk Driving, (3) an SB-38 Program, and (4) the Hospital and Morgue Program.

The Present Conviction Referral Proceeding

On October 14, 2008, the review department filed an order in which it referred respondent's DUI conviction, which was then not yet final, to the hearing department for a hearing and report on the limited issue of whether there was probable cause to believe that the facts and circumstances surrounding respondent's DUI offense involved moral turpitude. (Cal. Rules of Court, rule 9.10(a); §§ 6101, 6102; Rules Proc. of State Bar, rule 320(a).)

On October 24, 2008, one of this court's case administrators properly filed and served on the parties a notice of hearing on conviction. And, on November 14, 2008, respondent filed his response to that notice of hearing.

On February 23, 2009, the review department filed an order augmenting its October 14, 2008, referral order to include a trial and decision recommending the discipline to be imposed in the event the facts and circumstances surrounding respondent's DUI offense involved moral turpitude or other misconduct warranting discipline.

On April 22, 2009, the parties filed a joint stipulation as to facts. Thereafter, the trial in this proceeding was held on May 7, 2009. Following posttrial briefing by the parties, the court took the matter under submission for decision on July 24, 2009.

OVERVIEW OF CONVICTION REFERRAL PROCEEDINGS

In attorney disciplinary proceedings, "the record of [an attorney's] conviction [is] conclusive evidence of guilt of the crime of which he or she has been convicted." (§ 6101,

subd. (a); *In re Gross* (1983) 33 Cal.3d 561, 567.) Stated differently, an attorney's conviction is conclusive proof that the attorney committed all of the acts necessary to constitute the crime of which he or she was convicted. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 110.) However, with respect to crimes that do not inherently involve moral turpitude, such as respondent's misdemeanor DUI conviction, "Whether those acts amount to professional misconduct . . . is a conclusion that can only be reached by an examination of the facts and circumstances surrounding the conviction." (*In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 589, fn. 6.) That is because it is the attorney's conduct, not the conviction, that warrants discipline. (*In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 935; see also *In re Gross* (1983) 33 Cal.3d 561, 568.)

Moreover, in a conviction referral proceeding involving a crime that does not inherently involve moral turpitude, the State Bar has the burden to prove, by clear and convincing evidence, that the facts and circumstances surrounding an attorney's conviction involved moral turpitude or other misconduct warranting discipline. (*In the Matter of Carr* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 756, 759-760, 764.) Of course, when determining whether the State Bar has met its burden, the court may consider any dismissed or pending criminal charge in addition to the charge on which the attorney was convicted. (*In re Langford* (1966) 64 Cal.2d 489, 496.)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent is a very accomplished criminal defense attorney, handling major felony cases (primarily murder cases). At the time of respondent's arrest in April 2008,, he was representing a very trying defendant in a particularly stressful and contentious murder trial. That client, who was incarcerated, was pretending (even to respondent) to be mentally retarded. At times during the trial, the client had to be put in shackles in the courtroom. On another occasion,

the client's mother had to be removed from the courtroom because she would not stop yelling at the judge and the attorneys.

On the day of respondent's arrest, while respondent was seeking to voir dire the jury, the client pulled a purloined jail razor out of his dreadlocks, and in an apparent (or pretend) suicide attempt, the client slashed his own wrists. Blood, of course, spurted all over the courtroom floor, and the bailiff had to restrain the client until he could be removed from the courtroom by paramedics.

That same evening, after the day's trial was completed, respondent went to a restaurant where he meeting a longtime friend for a "reunion" dinner. He was taken there by his normal driver, who was then nineteen. Because this young person needed to attend to some personal matters that evening and the dinner was expected to be longer than brief, respondent sent the young driver home after they arrived at the restaurant. This caused respondent to drive himself home after dinner.

At dinner, respondent had two or three glasses of wine and a Sambuca with coffee, all of which caused respondent's blood alcohol content to exceed the legal limits.

While respondent was driving home after dinner, a Long Beach Police Officer stopped and arrested respondent for suspected driving under the influence. And, as noted *ante*, respondent was thereafter convicted on one misdemeanor count of driving under the influence on August 5, 2008.

Respondent's August 5, 2008, conviction is respondent's *third* DUI conviction. Respondent's first DUI conviction was in November 1989.[3] And his second was in April 1999, more than nine years prior to the current arrest.

[3] Regrettably, neither party noted or addressed the relevance of respondent's first DUI conviction in November 1989.

At trial in this disciplinary proceeding, the State Bar did not present any evidence which suggests that respondent has a current alcohol or drug abuse problem. In fact, without any analysis and citing to only *In re Kelley* (1990) 52 Cal.3d 487, the State Bar contends that it has established, by clear and convincing evidence, that respondent's August 5, 2008, DUI conviction involved "other misconduct warranting discipline" because the record establishes (1) that, on "April 16, 2008, after consuming at least 2-3 glasses of wine and a Sambuca with coffee," respondent operated a vehicle on 7th Street in Long Beach; (2) that, on April 16, 2008, a Long Beach Police Officer arrested respondent for suspected driving under the influence; (3) that, on April 16, 2008, a Blood Alcohol Test showed respondent's blood alcohol content level was 0.14 percent; (4) that, on August 5, 2008, respondent pleaded nolo contendere to and was convicted on one count of DUI; (5) that, on October 16, 2008, the superior court dismissed count 2, which charged respondent with driving a motor vehicle with a blood alcohol content level of more that 0.08 percent; and (6) that, in April 1999, respondent was previously convicted of driving under the influence.

In *In re Kelley*, *supra*, 52 Cal.3d 487, the Supreme Court held that Kelley's second drunk driving conviction involved other misconduct warranting discipline because her second conviction evidenced (1) a lack of respect for the legal system and (2) an alcohol abuse problem. Kelley's second drunk driving conviction evidenced a lack of respect for the legal system because it violated the terms of her probation that were imposed on her by a court order after her first conviction. (*Id*. at pp. 495-496.) Kelley's second drunk driving conviction evidenced an alcohol abuse problem (1) because she committed her second offense of drunk driving while she was still on probation for her first offense and (2) because she committed her second offense 31 months after her first offense. Respondent, however, did not violate a criminal probation order when he committed the offense underlying his August 5, 2008, DUI conviction. Nor did he

commit that offense while he was on probation for a prior DUI offense. Moreover, respondent committed the offense underlying his August 5, 2008, conviction more than nine years after the offense underlying his second DUI conviction in April 1999.

Nonetheless, the court finds that the facts and circumstances surrounding the offense underlying respondent's August 5, 2008, conviction involved other misconduct warranting discipline because that offense is respondent's *third* DUI offense and because respondent testified that, if he has more than two drinks, he may quickly go to five drinks without thinking. The fact that there is no evidence that respondent's alcohol abuse problem has ever had an adverse impact on his "practice or clients is an appropriate consideration in assessing the amount of discipline warranted in a given case, but it does not preclude the imposition of discipline as a threshold matter. [Citation.]" (*In re Kelley, supra*, 52 Cal.3d at p. 496.)

AGGRAVATING AND MITIGATING CIRCUMSTANCES

Aggravating Circumstances

Respondent has three prior records of discipline, all assessed during the period 1989-1993. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(b)(i).)[4] There

***Young* I**

Respondent's first prior record of discipline is *In re Young* (1989) 49 Cal.3d 257 (*Young* I). In *Young* I, the Supreme Court placed respondent on five years' stayed suspension, five years' probation, and four years actual suspension with credit for the period during which he was on interim suspension. The Supreme Court imposed that discipline on respondent following his January 1986 felony conviction for being an accessory to a felony after the fact (Pen. Code, § 32), which is crime involving moral turpitude per se. Respondent's criminal activities occurred

[4] All further references to standards are to this source.

in 1984 and 1985. The Supreme Court determined that respondent's misconduct allowed a fugitive wanted for a violent felony to evade prosecution and concluded that respondent acted dishonestly and that his misconduct constituted a fraud on the court. Nonetheless, the Supreme Court also held that "the facts and circumstances surrounding [respondent's] crime suggest [respondent] did not act out of self interest or any effort to obtain financial gain, but rather was motivated by his deep conviction that he should help those in need." (*Young* I, 49 Cal.3d at p. 268.) Moreover, the Supreme Court held that respondent's violations of his ethical and legal duties were tempered by the fact that respondent intended to convince his client to surrender, not to help his client flee the jurisdiction. (*Ibid.*)

There were no aggravating circumstances in *Young* I; however, there were a number of mitigating circumstances, including no prior record of discipline in more than 20 years of practice.

***Young* II**

Respondent's second prior record of discipline is the Supreme Court's August 28, 1991, order in case number S021593 (State Bar Court case number 94-O-13573) (*Young* II) in which the Supreme Court placed respondent on two years' stayed suspension, two years' probation, and sixty days' actual suspension. That discipline was imposed because, between 1983 and 1985 in a single client matter, respondent failed to promptly pay out settlement funds to his client, misappropriated through gross negligence $750 in settlement funds, and recklessly failed to perform legal services.

Respondent's misconduct in *Young* II was aggravated by his prior record of discipline in *Young* I and by client harm. And it was mitigated by respondent's cooperation with the State Bar, his acknowledgment of wrongdoing, and the State Bar's delay in bringing the disciplinary proceeding which was prejudicial to respondent.

Because much of the underlying misconduct in *Young* II occurred during the same time period as the underlying misconduct in *Young* I, the aggravating force of *Young* II as a prior record of discipline was significantly diminished. (*In the Matter of Sklar* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 602, 619.)

***Young* III**

Respondent's third prior record of discipline is the Supreme Court's September 9, 1993, order in case number S033678 (State Bar Court case number 91-O-00678) (*Young* III). Notwithstanding the two prior disciplines, the Supreme Court placed respondent **on ten days' stayed suspension** and one year's probation on conditions, but **no actual suspension**. That discipline was imposed on respondent because he stipulated to failing to perform legal services for a client because he did not work on the client's matter between March and July 1991 and between August 1991 and March 1992. In aggravation, respondent, of course, had two prior records of discipline. In mitigation, there was no client harm, respondent promptly acted to complete the client's matter when he was contacted by the State Bar, respondent cooperated with his client and the State Bar, and respondent expressed remorse.

Mitigating Circumstances

There is compelling mitigation in the present proceeding. Respondent's conviction did not cause any specific harm to the public, the courts, or respondent's clients. (Std. 1.2(e)(iii); *In re Kelley*, *supra*, 52 Cal.3d at p. 498.)

The evidence of respondent's good character is overwhelming. Respondent presented a number of very credible witnesses (including his secretary/paralegal and a college professor and a commercial airline pilot, both of whom have known respondent for 20 years or more) who each testified as to respondent's good character and dedication to helping others. (Std. 1.2(e)(vi); *In the Matter of Davis* (Review Dept. 2003) 4 Cal. State Bar Ct. Rptr. 576, 591-592 [significant

weight given to three character witnesses who were familiar with attorney's good character, work habits, and professional skills]; see also *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.)

Respondent also presented extremely credible testimony from two Los Angeles Superior Court Judges. One of the judges is the judge who presided over the stressful murder trial in which respondent represented the defendant on the day of his arrest. Neither of the judges is a personal friend of respondent's; both of them know respondent only through respondent's work in their courtrooms. Both judges described respondent as a very talented, very hard working, and committed criminal defense attorney, who exclusively handles felony cases of a serious nature. Neither judge has ever seen any indication of respondent being under the influence of alcohol in his work or of respondent otherwise being impaired at work. Furthermore, both judges stated, in the strongest terms, their opinions that respondent should be allowed to continue practicing law. The court gives great weight to these judges' positive testimony regarding respondent's outstanding legal abilities, high work ethic, and commitment to his clients. (Cf. *In re Menna* (1995) 11 Cal.4th 975, 988, quoting *Warbasse v. The State Bar* (1933) 219 Cal. 566, 571.)

In addition still, respondent credibly testified as to his high work ethics and dedication to his clients. (See *Rose v. State Bar* (1989) 49 Cal.3d 646, 667; *Hawk v. State Bar* (1988) 45 Cal.3d 589, 602 [attorney entitled to mitigating credit for his demonstrated legal abilities and dedication to clients].)

Respondent's involvement with the Adams Harbor Food Kitchen at St. John's Cathedral in Los Angeles for more than 20 years is truly impressive. Without question, respondent has committed a large part of his life activities to assisting the underprivileged, especially children. Respondent's extensive charitable activities are strong evidence of his exceptional character. (Cf. *In the Matter of Distefano* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 668, 675.)

Respondent is also entitled to mitigation for his cooperation with the State Bar by entering into a fairly comprehensive partial stipulation of facts. The stipulation assisted the State Bar in its prosecution of this case. (Cf. *In the Matter of Silver* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 902, 906.) Indeed, the State Bar's case-in-chief consisted solely of placing the parties' stipulation and the stipulated exhibits into evidence.

Finally, respondent is entitled to mitigation for his remorse and recognition of wrongdoing. (*Toll v. State Bar* (1974) 12 Cal.3d 824, 832.)

DISCUSSION

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession and to maintain the highest possible professional standards for attorneys. (Std. 1.3; *Chadwick v. State Bar, supra*, 49 Cal.3d at p. 111.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1085, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.) Although the standards are not binding, they are to be afforded great weight because "they promote the consistent and uniform application of disciplinary measures." (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Brown* (1995) 12 Cal.4th 205, 220.) Nevertheless, the court is "not bound to follow the standards in talismanic fashion. As the final and independent arbiter of attorney discipline, we are permitted to temper the letter of the law with considerations peculiar to the offense and the offender."[5] (*Howard v. State Bar* (1990) 51 Cal.3d 215, 221-222.) Second, the court considers relevant decisional law

[5] To the extent that the State Bar suggests, in its posttrial brief, that this quoted holding in *Howard* was somehow overruled or modified by *In re Silverton, supra*, 36 Cal.4th 81, the State Bar is incorrect. (See, e.g., *In the Matter of Van Sickle* (2006) 4 Cal. State Bar Ct. Rptr. 980, 994, review den. and recommended discipline adopted in Supreme Court minute order filed Jan. 24, 2007, in case number S147609; *In the Matter of Oheb, supra*, 4 Cal. State Bar Ct. Rptr. at p.

for guidance. (See *In the Matter of Van Sickle, supra*, 4 Cal. State Bar Ct. Rptr. at p. 996; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 703.)

In light of respondent's three prior records of discipline, the court first looks to standard 1.7(b), which provides for disbarment of an attorney who has two prior records of discipline "unless the most compelling mitigating circumstances clearly predominate." Notwithstanding its unequivocal language to the contrary, it has been well established for more than 18 years that disbarment is not mandated under standard 1.7(b) even if there are no compelling mitigating circumstances that clearly predominate in a case. (*Conroy v. State Bar* (1991) 53 Cal.3d 495, 506-507, citing *Arm v. State Bar* (1990) 50 Cal.3d 763, 778-779, 781.) Thus, even under standard 1.7(b), this court must not blindly treat all prior records of discipline as equally aggravating. Instead, this court must apply standard 1.7(b) "with due regard to the nature and extent of the respondent's prior records. [Citation.]" (*In the Matter of Meyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 697, 704.) In addition, when considering the applicability of standard 1.7(b), this court places "great weight on whether or not there is a 'common thread' among the various prior disciplinary proceedings or a 'habitual course of conduct' which justifies disbarment. [Citation.]" (*In the Matter of Shalant* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 829, 841.)

"[A]fter a careful examination of the substance and nature of [respondent's] disciplinary history and with due regard to the facts and circumstances of his present misconduct," the court finds that it would be manifestly unjust to strictly apply standard 1.7(b) by recommending that respondent be disbarred in the present proceeding. (*In the Matter of Shalant, supra*, 4 Cal. State Bar Ct. Rptr. at p. 842.) This is particularly true in light of the compelling mitigation in this

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940 ["although the Standards were established as guidelines, ultimately, the proper recommendation of discipline [rests] on a balanced consideration of the unique factors in each case"].)

proceeding. Even though respondent's first prior record of discipline involved extremely serious misconduct, there is neither a "common thread" among respondent's various disciplinary proceedings nor a "habitual course of conduct" that justifies respondent's disbarment in the present proceeding.

Second, the court looks to standard 1.7(a), which directs that the discipline imposed on an attorney who has one prior record of discipline is to "be greater than that imposed in the prior proceeding unless the prior discipline imposed was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust." As noted *ante*, respondent's first prior record of discipline, finalized with an order in 1989 (twenty years ago) involved extremely serious misconduct. Since then the Supreme Court, in handling the subsequent disciplinary matters, has ordered increasingly less severe discipline for each successive offense, rather than progressively greater discipline. In the last discipline, as emphasized above, the discipline included a stayed suspension of ten (10) days and no actual suspension.

Given the length of time that has transpired since respondent's last discipline, and the lack of any overlap between the bases for culpability, this court concludes that proper application of standard 1.7(a) here is accomplished by looking to the most recent discipline, rather than to the most remote.

Third, the court looks to standard 3.4. Under standard 3.4, the discipline for an attorney's conviction of a crime involving other misconduct warranting discipline, but not moral turpitude, is that discipline "appropriate to the nature and extent of the misconduct." (Std. 3.4; *In re Kelley, supra*, 52 Cal.3d at p. 498.) The court finds *In re Kelley, supra*, 52 Cal.3d 487 to be instructive on the level of discipline. In *Kelley*, the Supreme Court imposed a public reproval with an attached alcohol condition on the attorney.

In sum, the court concludes that ordinarily a public reproval with an alcohol condition attached to it for two years would be the appropriate level of discipline to impose on respondent. However, because of the number of prior disciplines, the court concludes that a higher level of discipline is warranted. Accordingly, the court will recommend that respondent be placed on one year's stay suspension, three years' probation, and thirty days' actual suspension.

DISCIPLINE RECOMMENDATION

Stayed Suspension & Probation Recommended

It is hereby recommended that respondent **LAWRENCE REX YOUNG,** State Bar Member Number 38323, be suspended from the practice of law in California for one year; that execution of that period of suspension be stayed; and that Young be placed on probation for three years on the following conditions:

1. Young is suspended from the practice of law for the first 30 days of probation.

2. Young must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all the conditions of this probation.

3. Young must maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation, his current office address and telephone number or, *if no office is maintained,* an address to be used for State Bar purposes. (Bus. & Prof. Code, § 6002.1, subd. (a).) Young must also maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation, his current home address and telephone number. (See Bus. & Prof. Code, § 6002.1, subd. (a)(5).) Young's home address and telephone number will *not* be made available to the general public. (Bus. & Prof. Code, § 6002.1, subd. (d).) Young must notify the Membership Records Office and the Office of Probation of any change in any of this information no later than 10 days after the change.

4. Within 30 days after the effective date of the Supreme Court order in this proceeding, Young must contact the Office of Probation and schedule a meeting with Young's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Young must meet with the probation deputy either in-person or by telephone. During the period of probation, Young must promptly meet with the probation deputy as directed and upon request of the Office of Probation.

5. No later than 30 days after the effective date of the Supreme Court order in this proceeding, Young must obtain an examination of his mental and physical condition with respect to his alcohol abuse condition from a qualified practitioner approved by the State

Bar's Office of Probation.[6] Thereafter, Young must participate in and comply with any treatment/monitoring plan recommended by the examining practitioner. Young must pay all costs of the examination and of any recommended treatment/monitoring plan. Young is to begin any recommended treatment/monitoring plan as soon as practical, but no later than 30 days after his examination.

With each quarterly report, Young must furnish to the Office of Probation sufficient evidence, as specified by the Office of Probation, that he is complying with this condition of probation. Treatment/monitoring must continue for the period of probation or until a motion to modify this condition is granted and that ruling becomes final.

Young must promptly provide his examining practitioner and any treating practitioner with appropriate waivers authorizing the practitioner or practitioners to provide the Office of Probation and the State Bar Court with sufficient information to establish whether Young is complying or has complied with this reproval condition. Young's revocation of any such waiver is a violation of this reproval condition. Any medical records obtained by the Office of Probation or the State Bar Court are to be confidential documents and no information about them or their contents is to be given to anyone except members of the Office of the Chief Trial Counsel, the Office of Probation, the State Bar Court, and the Supreme Court who are directly involved with maintaining, enforcing, or adjudicating this reproval condition.

If Young's examining or treating practitioner determines that there has been a substantial change in Young's condition, Young or the Office of Probation or the Office of the Chief Trial Counsel may file a motion for modification of this probation condition in accordance with Rules of Procedure of the State Bar, rule 550, et seq. Any such motion must be supported by a written declaration executed by Young's examining or treating practitioner or practitioners under penalty of perjury under the laws of the State of California.

6. Young must report, in writing, to the State Bar's Office of Probation no later than January 10, April 10, July 10 and October 10 of each year or part thereof in which Young is on probation (reporting dates). However, if Young's probation begins less than 30 days before a reporting date, Young may submit the first report no later than the second reporting date after the beginning of his probation. In each report, Young must state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit or under penalty of perjury under the laws of the State of California as follows:

   (i) In the first report, whether Young has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation since the beginning of probation; and

   (ii) In each subsequent report, whether Young has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation during that period. During the last 20 days of this probation, Young must submit a final report covering any period of probation remaining after and

[6] Approval cannot be unreasonably denied.

not covered by the last quarterly report required under this probation condition. In this final report, Young must certify to the matters set forth in subparagraph (ii) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.

7. Subject to the proper or good faith assertion of any applicable privilege, Young must fully, promptly, and truthfully answer any inquiries of the State Bar's Office of Probation that are directed to Young, whether orally or in writing, relating to whether Young is complying or has complied with the conditions of this probation.

8. Within one year after the effective date of the Supreme Court order in this matter, Young must attend and satisfactorily complete the State Bar's Ethics School and provide satisfactory proof of such completion to the State Bar's Office of Probation. This condition of probation is separate and apart from Young's California Minimum Continuing Legal Education (MCLE) requirements; accordingly, he is ordered not to claim any MCLE credit for attending and completing this course. (Accord, Rules Proc. of State Bar, rule 3201.)

9. Young's probation will commence on the effective date of the Supreme Court order in this matter. At the expiration of the period of probation, if Young has complied with all conditions of probation, the one-year period of stayed suspension will be satisfied and that suspension will be terminated.

Multistate Professional Responsibility Examination

It is further recommended that Young be required to take and pass the Multistate Professional Responsibility Examination within one year after the effective date of the Supreme Court order in this matter and to provide satisfactory proof of his passage to the State Bar's Office of Probation in Los Angeles within that same time period. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.)

Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

Dated: October 22, 2009.

DONALD F. MILES
Judge of the State Bar Court